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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,962	10/17/2001	Gary Neil	5282-49	4019

24035 7590 12/15/2003
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EXAMINER

BROWN, PETER R

ART UNIT PAPER NUMBER

3636

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,962

Applicant(s)

NEIL ET AL.

Examiner

Peter R. Brown

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 10-20 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Wylie.

Figure 3A shows structure as claimed, including a plastic support member 200A having a channel with a migratory securing means 230A therein. A flexible porous membrane 240A is forced into the channel where it is secured by the securing means to the channel. The phrase “for an ergonomic chair seat or chair back” is functional and does not impart any structure to the claim. Note that the

support member has a "contoured" top portion including part of the channel member, and a contoured bottom portion, including 211A as shown in figure 2A.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wylie.

The use of splines or "setting members" within channels for screens is old and well known in the art, and is discussed by Wylie in his specification. While the use of the securing means in the channel of Wylie is intended to replace the splines in terms of securing the membrane within the channel, it is the examiner's contention that one of ordinary skill in the art may apply a spline member within the channel of Wylie for aesthetic purposes, to cover the open channel of the support member, and/or for the purpose of preventing dirt from entering the channel. Note that the application of the spline within the channel before the securing means is set, would naturally adhere the spline member to the membrane. The specific material of the membrane and the securing means is considered a matter of design choice.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wylie in view of either Koepke or Stumpf et al.

Art Unit: 3636

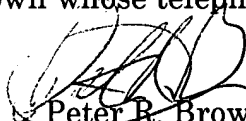
To have applied the teachings of Wylie, wherein a securing means and setting member is provided within a channel, to a seating structure, such as is shown by Koepke (figs. 3,4) and Stumpf (figs. 32-35), would have been obvious to one with ordinary skill in the art, thereby providing a more secure engagement between the fabric membrane and the support member.

Applicant's arguments filed October 2, 2003 have been fully considered but they are not persuasive.

Contrary to applicant's arguments, the phrase "for...a seat back", does not positively recite the chair structure, and as such is not given any patentable weight. Be that as it may, the use of stretched fabric, channels and members for holding the fabric within the channels is conventional and well known in the seating art, and to have applied the teaching of Wylie to such a structure would be considered within the level of skill in the art.

As set forth above, the frame member of Wylie, as shown in cross-section, includes a contoured top portion and a contoured bottom portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter R. Brown whose telephone number is 703-308-2103.


Peter R. Brown
Primary Examiner
Art Unit 3636

prb
December 15, 2003